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No. 04-134

Supreme Court, U.S.
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In The
Supreme Court of the United States

CALVIN GRIGSBY,

Petitioner,

v.

MIAMI-DADE COUNTY, FLORIDA, STEVEN B. BASS, ALEX PENELAS, KATHY JACKSON, MIRIAM ALONSO, RACHEL BAUM, and DELOITTE & TOUCHE LLP,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Eleventh Circuit

BRIEF IN OPPOSITION

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BRIEF IN OPPOSITION

The respondent, Deloitte & Touche LLP ("Deloitte"), respectfully requests that this Court deny the petition for writ of certiorari seeking review of the Eleventh Circuit's *per curiam* affirmance of the district court's decision in this case.

REASONS FOR DENYING THE WRIT

1. The decision below does not raise the first Question Presented in the petition.

In the first Question Presented, the petitioner asserts that the district court dismissed his Fourth Amendment "continuing seizure" claim against all defendants for failure to state a claim. With respect to Deloitte, that much is true. But the petitioner goes on to suggest that the dismissal was based upon the district court's refusal to recognize the viability of such a claim under the Fourth Amendment. That much is not true. The district court's several opinions, read together, clearly reveal that the district court in fact accepted the petitioner's contention that the Fourth Amendment provides a constitutional right to be free from an unreasonable "continuing seizure." What the district court did not accept was the petitioner's argument that the allegations in his amended complaint supported such a claim. The district court's dismissal of the petitioner's Fourth Amendment claim was based on its conclusion that the facts alleged in the petitioner's amended complaint failed to support such a claim. The Eleventh Circuit's *per curiam* affirmance of the district court's decision therefore does not raise the first Question Presented in the petition.

Count III of the amended complaint alleged a violation of the petitioner's due process rights under the Fifth Amendment by all defendants (100a-02a). Based upon the same facts, Count IV alleged an unreasonable seizure and restraint under the Fourth Amendment by all defendants (102a-03a). In essence, the two counts simply asserted two theories of liability upon a single set of facts. Accordingly, in granting Deloitte's motion to dismiss, the district court examined, discussed, and disposed of the two counts together (56a-59a). The district court began its analysis of the two counts by acknowledging that the petitioner had established the existence of a due process right on the facts alleged. Although it did not specifically reference the Fourth Amendment in the analysis that followed, there is nothing in its opinion to indicate any rejection of the petitioner's contention that the Fourth Amendment provides a right to be free of an unreasonable "continuing seizure."

To the contrary, in fact, what follows in the opinion demonstrates that the court fully recognized such a right, since it dismissed Counts III and IV of the complaint on entirely different grounds. Specifically, with respect to Deloitte, the district court dismissed both counts based on its conclusions that the allegations of the complaint were "vague and conclusory"; that the complaint failed to allege any facts demonstrating a causal connection between Deloitte's audit work and the petitioner's subsequent criminal prosecution; and that, in any case, any causal connection that may have existed was "severed by the intervening, free, independent and volitional acts of the FBI, the U.S. Attorneys' Office and the grand jury" (51a-58a).

The companion opinion in which the district court granted the other defendants' motion to dismiss further underscores the conclusion that the district court's dismissal of the petitioner's Fourth Amendment claim does not raise the first Question Presented. In that opinion, as it did in its opinion disposing of Deloitte's motion to dismiss, the district court examined, discussed, and disposed of Counts III and IV together (19a-21a). The district court explicitly acknowledged the existence of both constitutional rights claimed by the petitioner, but concluded – for reasons essentially the same as those it expressed in granting Deloitte's motion to dismiss – that the allegations of the complaint were insufficient to demonstrate a violation of those rights:

> . . . In sum, Plaintiffs allege that the Defendants deceived prosecutors in violation of their Fourth and Fourteenth Amendment rights, but they fail to allege any facts which, if true, . . . would establish that the Defendants caused any such violation. Because Plaintiffs have failed to allege that the Defendants' conduct constituted a constitutional violation, the Defendants are entitled to qualified immunity as to Counts III and IV of the Complaint.

(21a).

In this Court, the petitioner does not question the district court's rulings on the factual insufficiencies in his complaint. The only ruling he questions is one that was entirely favorable to him below. The Eleventh Circuit's *per curiam* affirmance of the district court's decision therefore does not raise the first Question Presented in the petition.

2. The second Question Presented in the petition does not affect this respondent.

The second Question Presented in the petition is relevant only to the petitioner's claims against respondent Bass, and does not implicate the petitioner's claims against Deloitte. Accordingly, we will not respond to it.

CONCLUSION

For these reasons, it is respectfully submitted that the petition for writ of certiorari should be denied.

Respectfully submitted,

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